

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

R.M.S. TITANIC, INC.,  
SUCCESSOR IN INTEREST TO  
TITANIC VENTURES, LIMITED  
PARTNERSHIP,

Plaintiff,

v.

THE WRECKED AND ABANDONED  
VESSEL, ETC.,

Defendant.

CIVIL ACTION NO.  
2:93cv902

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

December 17, 2018

BEFORE: THE HONORABLE REBECCA BEACH SMITH  
United States District Judge

APPEARANCES:

KALEO LEGAL  
By: Brian A. Wainger  
And  
McGUIRE WOODS LLP  
By: Robert W. McFarland  
Counsel for R.M.S. Titanic

1 APPEARANCES CONTINUED:  
2

3 UNITED STATES ATTORNEY'S OFFICE

4 By: Kent Porter

5 Assistant United States Attorney

6 Counsel for Amicus United States

7 THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

8 By: Jackie Roller

9 Counsel for NOAA

10 GREENBERG TRAURIG LLP

11 By: David G. Barger

12 Counsel for PAHL  
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1 (Hearing commenced at 2:07 p.m.)

2 THE CLERK: In case 2:93cv902, R.M.S. Titanic,  
3 Inc., et cetera, versus The Wrecked and Abandoned Vessel, et  
4 cetera.

5 Mr. McFarland, Mr. Wainger, is the plaintiff ready  
6 to proceed?

7 MR. McFARLAND: Good afternoon, Your Honor.  
8 Plaintiff is ready.

9 THE COURT: Good afternoon.

10 THE CLERK: Mr. Barger, is Intervenor Premier  
11 Acquisitions Holdings, LLC, ready to proceed?

12 MR. BARGER: We are. Good afternoon, Your Honor.

13 THE COURT: Good afternoon, Mr. Barger.

14 THE CLERK: Mr. Porter, is *amicus* United States of  
15 America ready to proceed?

16 MR. PORTER: We are. Good afternoon, Judge Smith.

17 THE COURT: All right. Counsel, I will briefly  
18 review where we are so that we can proceed on the  
19 outstanding matters before the Court in an appropriate  
20 order. Just to summarize for now, on November 16th, 2018,  
21 Premier Acquisition Holdings, LLC, PAHL, filed a proposed  
22 order and a declaration of Gilbert Li. That was ECF number  
23 527.

24 The proposed order, which is the proposed order to  
25 approve the Asset Purchase Agreement, was attached as

1 Exhibit A, and the declaration of Mr. Li was attached as  
2 Exhibit B.

3 On November 21, the United States as *amicus*, and on  
4 behalf of the National Oceanic and Atmospheric  
5 Administration, NOAA, filed a second supplemental report  
6 recommending that the Court approve R.M.S.T.'s motion to  
7 approve the Asset Purchase Agreement in accordance with  
8 PAHL's proposed order, and that was ECF number 530.

9 On November 22nd, 2018, the museum filed an amended  
10 motion to intervene. That's ECF numbers 519 and 520. On  
11 November 26, 2018, R.M.S.T. filed a memorandum in opposition  
12 ECF 532.

13 On November 30th, 2018 the museum filed a reply,  
14 ECF number 533. On November 19, 2018, this Court set a  
15 hearing for today, December 17th, at 2:00 p.m. on the  
16 outstanding motion to approve and the amended motion to  
17 intervene. Those are basically the filings. There have  
18 been voluminous filings, obviously, going back and forth in  
19 support of those major filings that I mentioned.

20 I have made a listing of all of the documents that  
21 have been filed since October 31, 2018; the document title  
22 and the parties that filed it. It's about a page and a half  
23 single spaced, and it does involve thousands of documents.  
24 I've also reviewed, going back into June, all of the  
25 documents in regard to approval of the APA; and going back

1 into August, all the documents related to the motion to  
2 intervene by the museum.

3 In any event, the listing of filings here is about  
4 five or six pages. So if we need to get to a specific  
5 document, if you give me the ECF number, I have the document  
6 referenced by date and ECF number. That's why I'm letting  
7 you know that, if we need to go to a document that I haven't  
8 determined to be of immediate need to the Court, unless it  
9 comes up during argument. So if you have a document and you  
10 want the Court to look at it, you do need to give me the  
11 date of the filing, the ECF number, the title of the  
12 document, and I'll be able to go right to it, I hope.

13 With that, if you want to make any type of  
14 preliminary statement, I have reviewed all of your filings,  
15 and I do have a number of questions that I will ask the  
16 parties and also the *amicus* NOAA. If there are any  
17 preliminary statements you want to make, Mr. McFarland,  
18 Mr. Wainger or Mr. Barger, you're free to do so.

19 Likewise, I would also note that Ms. Rolleri is  
20 here as is Matthew Troy. Both are here today on both of the  
21 *amicus*. If there is any statement you want to make  
22 preliminarily, go ahead.

23 MR. McFARLAND: Thank you, Your Honor. May it  
24 please the Court. Your Honor, when we were last here on  
25 October 25th, the Court expressed its position and certain

1 concerns as to the APA and the stock sale of R.M.S.T. and  
2 directed the parties to talk further and proceed in that  
3 vein if further submissions to the Court.

4 I can say, Your Honor, that the parties took the  
5 Court's words to heart, and there were extensive meetings  
6 and conferences with R.M.S.T. and the United States and  
7 NOAA, and between, as the Court has mentioned, PAHL filed a  
8 motion to intervene on November 5th, which the Court  
9 granted, and PAHL has had extensive discussions with the  
10 Court, as well.

11 We were happy to be able to submit, Your Honor, to  
12 the Court, as part of PAHL'S motion on November 16th, a  
13 fully endorsed order by all the parties in this action that  
14 asked the Court to approve the Asset Purchase Agreement and  
15 the stock sale of 100 percent of R.M.S.T.'s stock.  
16 Recognizing that the Court may have some questions, happy to  
17 address those.

18 But I think, Your Honor, what I guess my theme  
19 would be on that sense is, we understood what the Court was  
20 saying on October 25th. I think that the order that is  
21 presented, hopefully, it addresses the Court's concerns,  
22 both on behalf of my client, and I won't speak for PAHL,  
23 Mr. Barger, but I know, obviously, he has been involved, and  
24 I think PAHL has certainly expressed its willingness to do  
25 certain things that the Court wanted done.

1           Of course, the United States and NOAA have  
2 indicated in writing that they support the plan.

3           THE COURT: Mr. Wainger, is there anything you want  
4 to add?

5           MR. WAINGER: Nothing to add at this point, thank  
6 you, Judge.

7           THE COURT: Mr. Barger.

8           MR. BARGER: Certainly, Your Honor. A minute or  
9 two, maybe even less. Good afternoon, Your Honor.

10          THE COURT: Good afternoon.

11          MR. BARGER: Thank you for the opportunity to speak  
12 with you. Beyond the filings that the Court identified, the  
13 only thing additional I would add is, we have with us today  
14 Gilbert Li and Giovanni Wang who are speaking on behalf of  
15 PAHL, and specifically Mr. Li works with PacBridge and --  
16 I'm sorry. I have it backwards. Mr. Wong works with  
17 PacBridge, and Mr. Li works with Alta and Apollo. We are  
18 prepared, should the Court decide it wants to go there, to  
19 talk about some factual aspects of their involvement and the  
20 anticipated future involvement of PAHL and some of the work  
21 that they already know needs to be done should the Court  
22 ultimately approve the proposed sale order. So they are  
23 here to show the Court some additional factual information  
24 should the Court need to go into those areas.

25          THE COURT: Well, while you're there.

1 MR. BARGER: Yes, ma'am.

2 THE COURT: Is it Barger or Barjer (ph.)?

3 MR. BARGER: The short answer is I say Barjer  
4 (ph.).

5 THE COURT: The way you say it is the way it should  
6 be said, the way they you it pronounced.

7 MR. BARGER: If you will indulge me a second, when  
8 I was sworn in in 1989 in front of Judge Bryan, he asked me  
9 the same question exactly, and my grandfather, who died in  
10 '99 always said Barger Hargie. So Judge Bryan said, well,  
11 he thought -- I usually can do the imitation, but I won't,  
12 that he thought my grandfather knew best, so the entire time  
13 I practiced in front of Judge Bryan, he always said  
14 Mr. Barger. But I go by Barjer (ph.), Your Honor.

15 THE COURT: Well, I'm actually -- Judge Bryan is  
16 one of my heroes, along with Judges Hoffman, Kellam,  
17 McKenzie and Clarke.

18 MR. BARGER: Absolutely, yes.

19 THE COURT: I'm going to not please Judge Bryan and  
20 I'm going to call you Mr. Barger (ph.).

21 MR. BARGER: Thank you, Judge.

22 THE COURT: I do have some questions for you.

23 MR. BARGER: Sorry. Thank you. I thought I was  
24 off the hook. Sorry.

25 THE COURT: I don't think so.



1 MR. BARGER: No, I know. I'm teasing.

2 THE COURT: I'll just start right in. I was  
3 looking at PAHL's proposed order that is ECF Number 527-1.  
4 Paragraph 4 notes that PAHL has submitted a company  
5 resolution consent consistent with its LLC agreement that  
6 demonstrates that Mr. Li is authorized and powered and  
7 directed to file documents on behalf of PAHL consistent with  
8 the written consent, and that's at ECF number 527-1 at 2.

9 I cannot find any resolution or consent that has  
10 been submitted to the Court, and if it has, could you please  
11 let me know and give me the ECF number.

12 MR. BARGER: Yes, Your Honor. May I retrieve my  
13 notes?

14 THE COURT: Yes.

15 MR. BARGER: Sorry, Your Honor. Thank you. I do  
16 have a copy. My co-counsel, Mr. Grossman, provided me a  
17 copy of the unanimous written consent. Off the top of my  
18 head, I can't tell you if it was filed with the Court. I  
19 want to say I thought it might be in Docket 514, but I don't  
20 want to say that because I'm not positive. I'm happy to  
21 hand up a copy, if I can show it to Mr. Porter first. I'm  
22 sure we've already provided him a copy.

23 THE COURT: Have you seen this resolution,  
24 Mr. Porter?

25 MR. PORTER: We have, Your Honor. This is one of

1 the things that we requested that they provide to us.

2 THE COURT: I know that. I realize that you  
3 requested it and the provided it to you, but when I went  
4 through this, and I've been going through these filings for  
5 a month now, and I could have overlooked it, but I did not  
6 see any resolution that you requested that ever came to the  
7 Court.

8 MR. PORTER: We did request it, and it did come to  
9 us. We had a number of tracks working at the time we were  
10 working on this order. It's possible that, perhaps, I did  
11 not submit it, but we did request it. We did receive it.

12 THE COURT: Is that the same one?

13 MR. PORTER: Yes, it is.

14 MR. BARGER: We can file it, Your Honor, with the  
15 Court's permission.

16 THE COURT: We will file that as PAHL Exhibit 1 for  
17 purposes of this hearing and the agreement.

18 MR. BARGER: Thank you, Your Honor, my apologies  
19 that I did not submit it with the prior declarations.

20 THE COURT: This is the unanimous written consent  
21 of the members of PAHL on November 1, 2018. So this is the  
22 company resolution. Now, my next question would be, is  
23 there a resolution from each of the entities, each of the  
24 LLCs authorizing that individual to be appointed for them?  
25 In other words, you have PAHL that consists of three

1 entities.

2 MR. BARGER: Yes, Your Honor.

3 THE COURT: I can pull the clause up in the PAHL  
4 LLC agreement that requires a resolution and the consent of  
5 all members. I can give you that if you need it.

6 MR. BARGER: No, I recall it.

7 THE COURT: So this would be the resolution from  
8 PAHL that would be called for by their LLC. However, Apollo  
9 Credit Strategies Master Fund Limited, Alta Fundamental  
10 Advisors LLC and PacBridge Partners Investment Company  
11 Limited would each also have to have a resolution  
12 authorizing these individuals to act on their behalf to  
13 sign, and I haven't seen those resolutions.

14 MR. BARGER: Your Honor, I haven't looked at it,  
15 but I accept the Court's premise. I don't believe we have  
16 those resolutions, but we will provide those promptly. I  
17 believe the two individuals here are authorized to speak on  
18 behalf of the three entities, but in addition to whatever  
19 verbal statements they would make, will provide the Court  
20 the necessary resolutions.

21 THE COURT: Because under the law, in other words,  
22 they may sign on behalf of their LLC, and you've got  
23 something signed for PAHL, but then an LLC can't act through  
24 a person for them to sign unless they have their resolution.

25 MR. BARGER: Understood, Your Honor. I agree. We

1 will close that loop and solve that problem.

2 THE COURT: That was the first question I had.  
3 Madam clerk, if you would mark this PAHL Exhibit 1 for this  
4 proceeding.

5 (The document was received in evidence as PAHL  
6 Exhibit No. 1.)

7 MR. BARGER: Your Honor, may I confer for just a  
8 second?

9 THE COURT: Yes.

10 MR. BARGER: Thank you, Judge. Nothing further on  
11 that.

12 THE COURT: All right.

13 MR. BARGER: It's easy to solve that problem, and  
14 we will do that.

15 THE COURT: Now, this resolution, what does it  
16 authorize Mr. Li to do, in your opinion?

17 MR. BARGER: In my opinion, Your Honor, it  
18 authorizes Mr. Li to speak on behalf of PAHL specifically  
19 for purposes of signing the declaration or the declarations  
20 that he has signed and filed with the Court showing the  
21 Court PAHL's intention to enter into the agreement and to be  
22 bound by the various provisions of the APA, the Court's  
23 orders, and the proposed order that the parties have  
24 submitted to the Court. That's my interpretation of the  
25 declaration that PAHL has submitted.

1 THE COURT: You produced the resolution, but I want  
2 to be sure that this resolution, then, authorizes Mr. Li not  
3 only to file documents but to make representations on behalf  
4 of PAHL in this proceeding.

5 MR. BARGER: Yes, Your Honor.

6 THE COURT: I think it does.

7 MR. BARGER: Yes. Sorry.

8 THE COURT: It was just handed up to me, but I  
9 believe that it does that. That was a concern that I had  
10 because I hadn't seen any resolution.

11 MR. BARGER: Again, I apologize for that. We were  
12 moving fast. I take responsibility for not getting that  
13 filed to the Court.

14 THE COURT: Let me ask you another question, Mr.  
15 Badger, about the agreement.

16 MR. BARGER: Yes, Your Honor.

17 THE COURT: This has been a concern about the *in*  
18 *personam* jurisdiction. Reading Paragraphs B and C together  
19 of the proposed order, Paragraph B says that PAHL submits,  
20 "to the *in personam* jurisdiction of this Court for purposes  
21 of ensuring R.M.S.T. complies with the Court's orders  
22 relating to Titanic, including this order and the C&Cs..."  
23 that would stand for the covenants and conditions.

24 MR. BARGER: Yes, Your Honor.

25 THE COURT: "...and to ensure PAHL's commitments

1 and obligations under this order."

2 MR. BARGER: Yes, Your Honor.

3 THE COURT: Paragraph C then outlines one of PAHL's  
4 commitments as follows: "PAHL shall take no action, nor  
5 shall it refrain from taking any action, or direct or  
6 authorize R.M.S.T. to take any action or refrain from taking  
7 any action, that will result in or cause R.M.S.T.'s  
8 inability to comply fully with this Court's orders relating  
9 to Titanic, including this order and the C&Cs. Any such  
10 action by PAHL as described in this paragraph shall serve as  
11 PAHL's consent to the *in personam* jurisdiction of this Court  
12 for purposes of enforcing and adjudicating this Court's  
13 orders relating to Titanic, including this order and the  
14 C&Cs." It's a lot of words.

15 MR. BARGER: Yes.

16 THE COURT: What I would ask you, why didn't you  
17 simply submit a paragraph that says PAHL submits to the *in*  
18 *personam* jurisdiction of this Court for all purposes  
19 relating to this case, and then if you wanted to add  
20 including but not limited to? What are you trying to limit  
21 out of this?

22 MR. BARGER: Your Honor, I don't think we are  
23 trying to limit anything out of it. In fact, as I listened  
24 to the Court read the C&C and, from my personal perspective,  
25 C is a little bit superfluous because I do think B is very

1 broad, where we say we are subjected to *in personam*  
2 jurisdiction for the purposes of ensuring R.M.S.T.'s  
3 compliance and ensure PAHL's commitments and obligations  
4 under this order. The order, of course, speaks for itself,  
5 but there are a number of provisions in the order that  
6 broadly provide jurisdiction and power to the Court and  
7 supervision by the Court.

8           So there wasn't an intent to carve anything out to  
9 somehow limit the Court's jurisdiction, but you had a number  
10 of lawyers lawyering the document, and at least from my  
11 perspective -- and I was personally involved in some of that  
12 or in much of that -- I don't think B should be read as  
13 trying to carve something out away from the Court.

14           In fact, so B and C together, to me, generally  
15 reaffirm PAHL and R.M.S.T.'s commitments. R.M.S.T. already  
16 had the commitment from the prior history of the filings,  
17 but by PAHL coming in and signing the documents and agreeing  
18 to this, it provides an additional protection for the  
19 business, for the artifacts for the Court's jurisdiction.  
20 So I don't read it as limiting, at least that's Barger  
21 interpreting the Court order.

22           THE COURT: Well, you were part of the drafting.

23           MR. BARGER: Yes.

24           THE COURT: You are the counsel representing PAHL.

25           MR. BARGER: Yes, Your Honor.

1           THE COURT: So you're representing to the Court  
2 that, to your knowledge, there is no intent or effort to  
3 limit the *in personam* jurisdiction of the Court over PAHL?

4           MR. BARGER: No, Your Honor.

5           THE COURT: Now, let me ask you a couple of  
6 questions about *in rem* jurisdictions.

7           MR. BARGER: I'm out of my element already, but,  
8 yes, Your Honor.

9           THE COURT: Well, the *in rem* jurisdiction of the  
10 Court would be over the wreck.

11          MR. BARGER: The res, right -- or the wreck, right,  
12 correct.

13          THE COURT: Paragraph "I" of PAHL's proposed order  
14 revises a provision in NOAA's proposed order, and I want to  
15 go through the revision. My ultimate question will be why  
16 was the change made? In the provision, in NOAA's proposed  
17 order that forbid R.M.S.T. and PAHL from taking any action,  
18 underlines, that would remove, circumvent, or diminish the  
19 Court's admiralty jurisdiction over the wreck site and  
20 artifacts, and in your proposed order, that was changed to  
21 only forbidding R.M.S.T. and PAHL from amending the APA or  
22 their organizational documents or entering into any  
23 contracts that affect or which would be to remove,  
24 circumvent or diminish the Court's admiralty jurisdiction in  
25 this case.



1           Do you know why that change was made? I'm not  
2 saying it's a bad change. I'm just asking.

3           MR. BARGER: I understand.

4           THE COURT: I went through and looked at all the  
5 changes. I'm just trying to see if there is any reason. I  
6 didn't look at it necessarily as a detrimental change. I  
7 just was asking if you know why it was made? Was there any  
8 specific reason that you can recall?

9           MR. BARGER: Your Honor, there is none that I  
10 specifically recall. I would have to get the redline  
11 versions of the various documents to go back and look at  
12 exactly what the proposed language was. I can tell you  
13 generally, again, as the attorney of record, in looking at  
14 "I," and there were also, as I recollect, there were a  
15 couple of other paragraphs where we reaffirmed essentially  
16 that we weren't doing anything, when I say "we," meaning  
17 PAHL, to do anything to try to circumvent or interfere with  
18 or limit this Court's admiralty jurisdiction because the  
19 reality is, we couldn't. But at least I don't believe we  
20 could.

21           THE COURT: I would put that statement on the  
22 record, and at least the two bankruptcy judges of this court  
23 are in agreement, admiralty law clearly takes precedence  
24 over bankruptcy law. Admiralty law is international law,  
25 too. It takes precedence worldwide. So I would tell you

1 that. I'm not trying to show muscle over the bankruptcy  
2 court. It's just a fact of jurisdiction and the law.  
3 Admiralty jurisdiction and the jurisdiction here would take  
4 precedence over any type of bankruptcy jurisdiction.

5 MR. BARGER: Your Honor, and I understand. By way  
6 of fleshing this out a little bit, hypothetically there  
7 might arise something that is purely a bankruptcy court  
8 question where the parties might have to go back to the  
9 bankruptcy court.

10 THE COURT: I think you're going to have to, but  
11 I'm going to ask some bankruptcy questions of Mr. McFarland  
12 and Mr. Wainger in a minute, and then you can add to them.  
13 I don't know if you're a bankruptcy practitioner or if you  
14 have been involved in those proceedings at all.

15 MR. BARGER: I have not. I practice on rare  
16 occasion in bankruptcy court. I would say my knowledge of  
17 *in rem* is a little bit better than my knowledge of  
18 bankruptcy.

19 THE COURT: I will accept that, and for right now  
20 I'm not looking at this unless NOAA, and you might want to  
21 address if you've discussed that at all, Mr. Porter, because  
22 this was a change to your language, whether this change is  
23 creating any kind of loophole or substantive matter as  
24 opposed to what NOAA suggests, because it was a change to  
25 NOAA. You can address that. I'm going to call on you in a

1 moment.

2 Next question, Mr. Barger.

3 MR. BARGER: Yes, Your Honor.

4 THE COURT: I note that, and this may be for  
5 actually R.M.S.T. because I think this was their filing.  
6 I'll give the question, and then if they have an answer,  
7 then the next time they come up, they can address it. On  
8 November 15th, 2018, R.M.S.T. filed three exhibits: A  
9 reserve account bank information, a safe deposit bank box  
10 information, and contact information for exhibition venues.  
11 Those are ECF Numbers 521, 524 and 525. These documents  
12 appear to have been filed in response to the request for  
13 these in Paragraph L of NOAA's proposed order, which was  
14 ECF Number 517-1.

15 However, I note that the information for the  
16 exhibition venue in China is missing from Exhibit C, the  
17 contact information for R.M.S.T.'s exhibit venues. That's  
18 521-3, ECF Number 521-3, according to your exhibition  
19 agreement, and that is what was included in the due  
20 diligence documents. I'm going back to Exhibit G, which was  
21 ECF 510-7. That exhibition continues into 2019.

22 In other words, when you put the documents  
23 together, or R.M.S. Titanic files ECF Number 521-3, and the  
24 exhibition venue and information, contact information is  
25 missing in that filing. According to the exhibition

1 agreement that was given in response to due diligence, the  
2 due diligence document, which is 510-7, that exhibition goes  
3 into next year. So my question would be more appropriate,  
4 Mr. Barger, for Mr. Wainger and Mr. McFarland when they get  
5 to address the Court next.

6 MR. BARGER: All right, Your Honor.

7 THE COURT: Unless there is something you want to  
8 flag on behalf of PAHL.

9 MR. BARGER: Yes, Your Honor. If I could just ask  
10 the Court. I've got 521-3 in front of me, which lists the  
11 certain venues, temporary venues and permanent venues. I  
12 just want to make sure I understood the Court's concern.  
13 What's missing, you said something, that their contact  
14 information is missing? Sorry, Your Honor. I just didn't  
15 understand.

16 THE COURT: They gave three exhibits: A reserve  
17 bank account, a safety deposit box bank information, and the  
18 contact information for exhibit venues, and that was 521,  
19 524 and 525. They were filed in response to the request for  
20 these documents from NOAA, in Paragraph L of NOAA's exhibit,  
21 which is ECF Number 517-1.

22 MR. BARGER: Yes, Your Honor.

23 THE COURT: However, the information on exhibit  
24 venue in China is missing from Exhibit C.

25 MR. BARGER: I understand the Court's question.

1 THE COURT: 521-3, is that what you're looking at?

2 MR. BARGER: I am, and I see there is no venue  
3 listed for China. I know Mr. Li and Mr. Wong can both  
4 identify, they can at least state their understanding of  
5 whether there is an exhibition in China and when the lease  
6 expires. I think there is one, but it will be their  
7 understanding, and I'm confident R.M.S.T., as the debtor and  
8 their secretary, can tell the Court more accurately than I  
9 can. It's a long way of saying you're right.

10 THE COURT: These are just some *in rem* questions.  
11 I'm not trying to put you on the spot because I do think  
12 that Mr. McFarland, Mr. Wainger or Mr. Porter can better  
13 respond to that since there were actually documents that  
14 were produced basically from NOAA's due diligence.

15 MR. BARGER: I apologize I didn't have the answer  
16 for you, but I'll check.

17 THE COURT: I may have some more questions for you  
18 later as the hearing progresses, Mr. Barger, but I think  
19 that that's all that I had for the moment.

20 MR. BARGER: All right. Thank you, Judge.

21 THE COURT: Mr. Porter. Let me ask you a threshold  
22 question before we proceed any further, that is, NOAA has,  
23 as Mr. McFarland said, signed on to the Asset Purchase  
24 Agreement, and you have signed it under, it says "seen."

25 When you sign something seen, you also agree to it.

1 Under the law there are three ways to sign proposed orders  
2 for a Court. It's we ask for this, we want it, another is  
3 seen and agreed, and the other is seen and objected to.  
4 Before I enter it, I would require NOAA to add to that "seen  
5 and agreed." Are you willing to do that?

6 MR. PORTER: Absolutely, Your Honor. The reason it  
7 is as it is, is because we are in position of an *amicus*. I  
8 have talked to a number of people whether we even need to be  
9 on the order or not, but I wanted to be at least on the  
10 orders as seen, but I can tell you, Your Honor, that myself  
11 and Ms. Rolleri were actively involved in drafting this  
12 order, and I have no difficulty whatsoever with an agreed.

13 THE COURT: You're *amicus* because it was only the  
14 Court in here for many years, and that's not a proper way to  
15 proceed in a court when the United States has an interest in  
16 the action. I directed the United States Attorney to enter  
17 this case a number of years ago because the Court should not  
18 have to be put in the position of being an adversary or  
19 advocating.

20 The Court's role is to protect the artifacts and  
21 the wreck site under the admiralty jurisdiction and salvage  
22 law of the United States. I just wanted to be sure. I know  
23 the "seen" means you agree, but I'd feel better if you also  
24 put "and agreed."

25 MR. PORTER: I have no difficulty with that, Your

1 Honor.

2 THE COURT: The United States is on that order if  
3 something happens to these artifacts.

4 MR. PORTER: Understood, Your Honor.

5 Your Honor, to address the two questions about some  
6 of the provisions in the order, you raised the question  
7 about the language in Paragraphs B and C. I can certainly  
8 represent to the Court that there is no intention there to  
9 try, with Paragraph C, to carve out any provision.

10 On the contrary, in an effort to try to carve in as  
11 much as possible, I wanted to make sure that it was clear  
12 that it was not only affirmative action on PAHL's behalf  
13 that would make it culpable, but inaction, simply standing  
14 on the sidelines that if some way caused R.M.S.T. to fail to  
15 comply.

16 So that was the intent of that, Your Honor,  
17 certainly not to carve out but to make clear that action and  
18 inaction could make PAHL culpable and ensure that PAHL is  
19 before the Court personally. That was the purpose of that  
20 one.

21 The second, in the *in rem* provisions in Paragraph  
22 "I," I would also reference the Court to Paragraph L, which  
23 indicates that, "Except as expressly authorized herein,  
24 nothing in this order shall be construed to alter, affect or  
25 limit R.M.S.T.'s current salvor-in-possession status, this

1 Court's *in rem* jurisdiction over the Titanic wreck."

2 Again, as Mr. Barger indicates, you have a number  
3 of lawyers working on this, and all have particular  
4 interests, and one of the reasons that "I" is worded as it  
5 is, is because the Court expressed particular concern about  
6 the APA, the Asset Purchase Agreement, and whether the Asset  
7 Purchase Agreement in some form or fashion pulled back on  
8 the Court's jurisdiction.

9 We wanted to make absolutely sure that it did not  
10 do that, or that they amended any of their documents,  
11 organizational documents for that to happen. So that's the  
12 reason.

13 THE COURT: Thank you.

14 MR. PORTER: All right.

15 THE COURT: Give me a moment before I bring you  
16 back up here so that we can cover all the questions that I  
17 might have.

18 All right, Mr. McFarland.

19 MR. McFARLAND: Thank you, Your Honor.

20 THE COURT: Let me start with some questions about  
21 the bankruptcy court proceedings. The bankruptcy court has  
22 approved the sale subject to this Court's approval of the  
23 Asset Purchase Agreement; is that correct?

24 MR. McFARLAND: Correct, Your Honor.

25 THE COURT: Has a plan been confirmed?



1 MR. McFARLAND: Not at this point in time, Your  
2 Honor.

3 THE COURT: So the sale is pursuant to Section 363  
4 of the bankruptcy code?

5 MR. McFARLAND: I believe that's correct, Your  
6 Honor.

7 THE COURT: Not a Chapter 11 plan?

8 MR. McFARLAND: What was filed is a Chapter -- but  
9 I think the confirmation would be 363. I believe that is  
10 correct, Your Honor. Between Mr. Barger and I, I'm not sure  
11 whose bankruptcy knowledge is -- but that is correct.

12 THE COURT: Well, that would be my reading of the  
13 documents, that the bankruptcy court approved the sale, but  
14 their plan has not been confirmed, so the sale would be  
15 approval pursuant to Section 363 of the bankruptcy code.

16 MR. McFARLAND: That is correct, Your Honor.

17 THE COURT: Not a Chapter 11 plan at this juncture?

18 MR. McFARLAND: Right.

19 THE COURT: The next is, if for some reason this  
20 sale fails to close, couldn't a plan then still be confirmed  
21 by the bankruptcy court?

22 MR. McFARLAND: I don't think what's before the  
23 Court at this point could be confirmed, Your Honor. In  
24 fact, I think, as we have indicated to the Court, if the  
25 sale is not approved and the stock purchase not approved, I

1 think we are going to be surely looking at a different  
2 bankruptcy proceeding, a Chapter 7 with a trustee directly  
3 involved.

4 THE COURT: But if no Chapter 11 plan has been  
5 confirmed, and the museum's plan was held in abeyance by the  
6 bankruptcy court, right?

7 MR. McFARLAND: I don't think the museum's plan is  
8 actually held in abeyance by the bankruptcy court. The  
9 museum had the opportunity to participate. They chose not  
10 to. The museum has nothing left before the bankruptcy  
11 court, is my understanding.

12 THE COURT: I'm not sure that I agree with you on  
13 that from what I have read. Are there any other plans?  
14 Let's just call it held in abeyance rather than a legal  
15 term, just a term of art we all know, held in abeyance not  
16 acted upon.

17 Are there any other plans that have been held in  
18 abeyance or not acted upon or that otherwise were presented  
19 to the bankruptcy court that have been rejected? Because I  
20 don't see the museum's plan as rejected, I just saw what you  
21 proposed as approved over what they proposed.

22 MR. McFARLAND: I think, Your Honor, and I will  
23 certainly defer to any of the folks who are here, I think  
24 the museum put something out but they never officially put  
25 it out before the bankruptcy court so that it didn't need to

1 be rejected. There was only one viable plan for the  
2 bankruptcy court to approve, which it did, on October 18th  
3 of 2018.

4 THE COURT: They didn't approve a plan.

5 MR. McFARLAND: I'm sorry, one sale, approval of  
6 sale plan.

7 THE COURT: There has been, and I spent a lot of  
8 time looking into this, and that's why I wanted to ask the  
9 question, because what I see in the papers that have been  
10 filed with the Court is the bankruptcy court approved a sale  
11 subject to this Court's approval of an Asset Purchase  
12 Agreement.

13 MR. McFARLAND: Correct.

14 THE COURT: But there's been no Chapter 11 plan  
15 confirmed. This would be a Section 363 sale under the  
16 bankruptcy code.

17 MR. McFARLAND: Yes, Your Honor. The Court's  
18 recitation is, as I understand it, correct, and we also have  
19 Mr. Brooks here, bankruptcy counsel for the company, should  
20 the Court have further questions in that that are beyond my  
21 akin.

22 THE COURT: I understand. You may want to consult  
23 with him. I can take a recess. I just want to get my  
24 questions out so that if you all need to confer, you can get  
25 answers, and these are just things that I want to be clear

1 on the record here and clear to me, as I proceed.

2 That question that I have, if for some reason the  
3 sale fails to close, there could be any number of reasons,  
4 say the Court approved the asset purchase plan but makes  
5 some small changes to it, subject to changes. As I  
6 understand, as I've read the documents, any closing is  
7 contingent upon my order approving the asset purchase plan  
8 being satisfactory to PAHL.

9 MR. McFARLAND: Right.

10 THE COURT: I may make some small changes to it, so  
11 PAHL may decide they don't like my changes, or they might  
12 want to file something. I don't know. I'm not saying I'm  
13 going to. I'm just proposing some of these out as  
14 possibilities and hypothetical questions, or however you  
15 want to phrase that.

16 If for some reason, whatever reason, maybe it is  
17 one little line that the Court adds into the Asset Purchase  
18 Agreement and PAHL says that's a deal breaker, we are not  
19 going to do this, and if for some reason the sale fails to  
20 close, what I'm trying to understand is, could a plan still  
21 be confirmed under the bankruptcy code under Chapter 11?

22 MR. McFARLAND: I don't think so, Your Honor,  
23 particularly at this point in time.

24 THE COURT: I'm putting aside R.M.S.T.'s cash flow  
25 problems. I'm talking just strictly legal questions now.

1 But setting aside the cash flow problems, is there any legal  
2 authority that would prevent that possibility?

3 MR. MCFARLAND: Then we would be back to a  
4 situation where looking at what other options would come  
5 forward.

6 THE COURT: That's why I was referring to the  
7 museum's plan because as I understand it, it was before the  
8 bankruptcy court. They didn't proceed on it.

9 MR. WAINGER: Judge, if I may just on this one  
10 specific point. It was not the museum's plan, it was the  
11 creditors' committee's plan, and they allowed the museum to  
12 join it. The creditors' committee was a party in interest.  
13 They withdrew the plan.

14 THE COURT: They withdrew what plan?

15 MR. WAINGER: The plan that they had proposed, the  
16 creditors' committee, they withdrew it. They no longer  
17 support that plan. So that doesn't exist. There is no  
18 support for that plan. It could not be passed, and so that  
19 is not a reality down in Florida.

20 I understand the Court had set aside the concept of  
21 cash flow, but I do think it's important to understand that  
22 the cash flow situation is integral to the larger picture,  
23 and that is the debtor will have to convert -- that's the  
24 only option at this point should PAHL -- should the Court  
25 not approve the transactions and/or should PAHL walk away

1 from any changes, if any, made by the Court.

2 THE COURT: Well, you would still have to get  
3 approval of the bankruptcy court to convert to Chapter 7,  
4 wouldn't you?

5 MR. WAINGER: We would have to obtain approval, but  
6 at this stage there would be no other option whatsoever  
7 given all the circumstances. We have been struggling, and I  
8 say "we" the collective, to keep that case, our collective  
9 heads above water to try to get this taken care of.

10 THE COURT: Basically, what you're talking about is  
11 between the creditors and the debtors, there is no other  
12 option?

13 MR. WAINGER: Between all of constituents to the  
14 bankruptcy, of which there are now many, there are no other  
15 options. We did ask Mr. Troy to be able to speak to that,  
16 as well, should the Court seek other perspectives, and we do  
17 have Mr. Brooks from Troutman Sanders who is a bankruptcy  
18 expert. So we have plenty of ammunition for the Court if we  
19 want to speak further on that.

20 THE COURT: Thank you. Let me see if I have any  
21 more questions in that area, Mr. McFarland.

22 We can go back now to the information on the venue  
23 in China, the exhibition venue in China. Why don't you  
24 speak about that.

25 MR. McFARLAND: Yes, Your Honor. That exhibition

1 in China closed October 31st of 2018. It was not a  
2 permanent exhibition. What the government and NOAA had  
3 requested was to provide the addresses and contact  
4 information for permanent exhibitions, which we did, and  
5 then we also just -- I'm going to use this term -- for belt  
6 and suspenders, which I think also goes to Paragraphs B and  
7 C that Your Honor was going on, is applicable there, but we  
8 provided the contact information addresses for temporary  
9 venues, as well.

10 But by the time we filed that on November, I  
11 believe it was the 15th.

12 THE COURT: So, in other words, you didn't omit it.  
13 It's just that things had changed, and it wasn't going into  
14 2019?

15 MR. McFARLAND: Exactly, Your Honor. And, in fact,  
16 the artifacts that were in that exhibition have been  
17 returned to the United States.

18 THE COURT: I just wanted to be sure that wasn't an  
19 omission. It was an omission but it was intentionally  
20 omitted because it was over?

21 MR. McFARLAND: Didn't fall under either category  
22 temporary or permanent, Your Honor, that's right.

23 THE COURT: Let me go through my notes one more  
24 time while you are still up there.

25 MR. McFARLAND: I would say, Your Honor, and I

1 would apologize because I was a little slow on the take on  
2 one of Your Honor's bankruptcy questions. But the  
3 creditors' committee, with whom the museum was originally  
4 teamed, actually supported the sale plan that the bankruptcy  
5 court approved on October 18th.

6 THE COURT: All right. From your perspective, in  
7 what form, assuming the Court approves this Asset Purchase  
8 Agreement, will R.M.S.T. still exist?

9 MR. McFARLAND: Yes, Your Honor.

10 THE COURT: In what form?

11 MR. McFARLAND: In the same corporate entity that  
12 it is now. It will have a different board of directors, but  
13 it will still exist as an independent corporation. It will  
14 still continue to, among its duties, conserve, curate,  
15 preserve, and be involved in the exhibition of the  
16 artifacts, and the education aspect, and will still have the  
17 salvage rights and be the salvor in possession for the wreck  
18 site.

19 THE COURT: All right. In that regard, then, the  
20 reason I'm looking at that proposed order, and I'm looking  
21 at Section D of that order, and I'm looking at the red and  
22 the blue lined versions, I notice that this was changed from  
23 R.M.S.T. and PAHL shall promptly inform the Court and NOAA  
24 of any change to the composition and makeup of R.M.S.T.  
25 board's, officers and senior management team or any change



1 of control of R.M.S.T. Why was PAHL omitted from that?

2 MR. McFARLAND: I think it's important to maintain  
3 the corporate formalities, Your Honor. If we are talking  
4 about the R.M.S.T., the party that is before this Court  
5 right now, and of course, PAHL has agreed it will also.

6 THE COURT: PAHL is now going to be before the  
7 Court.

8 MR. McFARLAND: They will be, Your Honor. But in  
9 terms of maintaining corporate formalities, if it's a change  
10 in R.M.S.T., then that ought to come to the Court from  
11 R.M.S.T.

12 THE COURT: But if PAHL is the parent company,  
13 could it also come from the parent company.

14 MR. McFARLAND: It could, Your Honor.

15 THE COURT: So why not add both?

16 MR. McFARLAND: I think, Your Honor, we thought  
17 that having been before this Court for 20 plus years that we  
18 ought to be the entity that would report those things.

19 THE COURT: It didn't please the Court when your  
20 acquisition was before the Court. You had been before the  
21 Court for 20 some years, but maybe the Court wanted more  
22 than you before the Court. We have gone through that one  
23 before.

24 MR. McFARLAND: Or, Your Honor, what I'm saying is  
25 to the extent that PAHL is going to report things, then PAHL

1 would do that. But I think for clarity purposes and for  
2 maintaining the corporate identities, information about  
3 R.M.S.T. itself ought to come from R.M.S.T.

4 THE COURT: Why can't it come from both?

5 MR. McFARLAND: Well, I think, Your Honor, it does.  
6 If we look at J, and part of this is, again, what I will  
7 call the belt and suspenders. J references PAHL's  
8 obligations. You will note that in J we don't list R.M.S.T.

9 THE COURT: I'm looking at the redlined and green  
10 and blue versions. So I've got to find the J in that  
11 version. You are talking about in the current version that  
12 is now J?

13 MR. McFARLAND: Exactly, Your Honor.

14 THE COURT: I'm on that. I've got the current  
15 version of J.

16 MR. McFARLAND: So J indicates that PAHL is  
17 undertaking and will undertake certain obligations to the  
18 Court. At least I guess I'll say from our perspective, and  
19 by "our" I mean the debtor's perspective and R.M.S.T., it is  
20 always important to keep these entities so there is no  
21 problems to make some separation.

22 So J references PAHL and D references R.M.S.T.  
23 Now, as a practical matter, it may not have a great effect  
24 as to the report of Your Honor, but we thought for purposes  
25 of the order, it was good to break them down.

1           THE COURT: Don't you already have an executed  
2 membership agreement for PAHL? So why is within 60 days of  
3 the transaction closing? Are you planning to change all  
4 this around after you close? This says, "Within 60 days of  
5 the transaction closing, PAHL shall: Provide to the Court  
6 and NOAA a copy of the executed membership agreement for  
7 PAHL with all amendments thereto."

8           So I can't count on the membership agreement that's  
9 before the Court now? This is giving authority to  
10 re-execute a membership agreement and make amendments to it,  
11 and then, "Inform the Court and NOAA of the appointment of  
12 any manager or managing member for PAHL." I thought I  
13 already had the membership agreement for PAHL.

14           MR. McFARLAND: I think you do, Your Honor. What  
15 the final versions look after the closing, that's not -- we  
16 are not directly involved in what PAHL may be submitting on  
17 that, but I think this is just referencing that. There  
18 still has to be a closing.

19           THE COURT: I understand there's got to be a  
20 closing, but why isn't it being a closing based upon PAHL as  
21 it stands before the Court today? This says that within 60  
22 days of closing, that was going to be a question later, but  
23 now that you've brought it up, I don't see this relating to  
24 what I just asked you because this says to the Court that,  
25 actually, within 60 days after this closes, PAHL can come in

1 and give the Court and NOAA a copy of an executed membership  
2 agreement with all amendments thereto. I thought we had a  
3 copy of an executed membership agreement. Are new members  
4 going to be added?

5 What kind of amendments are going to made? "Inform  
6 the Court and NOAA of the appointment of any manager or  
7 managing member for PAHL" -- so are they going to change --  
8 "and identify those officials of PAHL that have authority to  
9 bind PAHL with respect to..." So this is backing off of  
10 PAHL being bound by this Court's admiralty jurisdiction.

11 Then you're going to tell the Court, well, we've  
12 designated this person or we couldn't agree. So these  
13 resolutions I'm asking for, this is a back-off provision, in  
14 my opinion, that allows you to go in and say we have 60 days  
15 after this closes to give you a membership agreement, any  
16 amendments we make to it, name officials who have authority  
17 to bind us with respect to the Court's admiralty  
18 jurisdiction and the STAC and authority of this Court.

19 That is backing off to enforce or adjudicate  
20 compliance. PAHL is PAHL. Once they sign on here and  
21 they've appeared before the Court, why should the Court then  
22 give them 60 days to go in and change their membership  
23 agreement and amend it and appoint different managers and  
24 appoint different people to bind before this Court? Why is  
25 that provision there?

1 MR. McFARLAND: Your Honor, I'm not trying to  
2 dodge, but I think in some respects that's really a question  
3 for PAHL. But I am speaking for R.M.S.T. I'm not aware of  
4 any effort.

5 THE COURT: The reason I got to that before I got  
6 back to PAHL was because you referenced it. I asked you  
7 what form R.M.S.T. would exist in.

8 MR. McFARLAND: Right.

9 THE COURT: Then I'm asking the question about why  
10 it's not, and PAHL promptly informed, why wasn't both of  
11 them? Why they both couldn't have the duty to the Court as  
12 the parent and the subsidiary, or there could be one filing  
13 on behalf of both of them doing that?

14 MR. McFARLAND: My point there, Your Honor, I was  
15 referencing Paragraph J just to show the distinction that is  
16 made when there are separate filings or separate, if you  
17 will, obligations. It may be that you could do a joint  
18 filing in that sense, but we wanted to, particularly at this  
19 point in time, for the transaction to make sure that the  
20 corporate formalities. R.M.S.T. is a separate corporate  
21 entity, as we have said to the Court, and it will remain a  
22 separate corporate entity with its own board of directors,  
23 retaining the assets that it presently has.

24 Now, PAHL is going to acquire a hundred percent of  
25 its stock, if this is approved by this Court and then the

1 final closing occurs. But I was referencing and trying to  
2 show that there is in this agreement, when it is something  
3 that's R.M.S.T.'s, it is broken out that way. When it is  
4 something that's PAHL's, it is broken out that way. And  
5 then I think there are certain provisions, for example,  
6 Paragraph G which references that certain things are going  
7 to be done by both of them, and there you've got PAHL acting  
8 in its oversight capacity in a sense because that's one of  
9 the obligations it undertook before this Court, acting in  
10 its oversight capacity with R.M.S.T. to provide, for  
11 example, 60 days' notice as to the collection.

12 There is a later provision, as well, on the C&C's,  
13 et cetera. If there's going to be an exhibition -- excuse  
14 me, an expedition, as in Paragraph H, that's an R.M.S.T.  
15 function, an R.M.S.T. duty.

16 THE COURT: I agree.

17 MR. McFARLAND: So that is why you will see just  
18 R.M.S.T. there. I don't think, Your Honor, there is any  
19 intention to backtrack in any way what is before the Court.

20 THE COURT: I'll ask this of Mr. Barger, but what's  
21 being contemplated within 60 days of this transaction in  
22 regard to a new executed membership agreement with  
23 amendments thereto? Somebody's contemplating something or  
24 they wouldn't put this provision in.

25 MR. McFARLAND: I think, Your Honor, and, again, I

1 don't want to speak too far, but I think this is the  
2 transactional attorneys weighing in with the admiralty  
3 attorneys.

4 THE COURT: Then maybe the admiralty attorneys  
5 ought to prevail. This is just an aside. When I was  
6 practicing law, transactional attorneys, there were deal  
7 makers and deal breakers. That's the old saying in the law.  
8 Some transactional attorneys are deal makers and some are  
9 deal breakers. When you insist upon too much minutia  
10 because you're scared or protecting yourself or whatever,  
11 you can be a deal breaker.

12 MR. McFARLAND: And I can say to the Court,  
13 speaking on behalf of my clients, the debtors, there has not  
14 been anything but an attempt to, A, try and address the  
15 Court's concerns from the October 25th hearing; and, B, make  
16 it so there is a transaction that works. That's what I  
17 think is intended here.

18 THE COURT: I'm not disagreeing with you,  
19 Mr. McFarland. I'm not disagreeing with R.M.S.T. I asked  
20 you a question about whether you knew why PAHL had been  
21 removed from that provision and only R.M.S.T. left in. You  
22 are the one that took the Court over to J, and I have not  
23 gotten to my yellow tabs in the red, green, blue and black  
24 inked order. So you took me over to another tab, which is  
25 why I asked you that question.

1 I think that is all, Mr. McFarland, for now.

2 MR. MCFARLAND: Thank you, Your Honor.

3 THE COURT: We will take a 15-minute recess, and,  
4 Mr. Barger, you, obviously, know the next question that I'm  
5 going to ask you in regard to section J of the proposed  
6 order. If anyone wants to make any further statement on the  
7 bankruptcy proceedings, you can do that.

8 MR. BARGER: Yes, Your Honor.

9 THE COURT: I'll hear one more time from you,  
10 Mr. Porter, on some of the things that have been raised.

11 MR. PORTER: Your Honor, I would certainly invite  
12 you to hear from Mr. Troy, if you would like, on the  
13 bankruptcy aspect.

14 THE COURT: That will be fine. We will first hear  
15 on the bankruptcy issue since that was raised before, then  
16 we will go to Mr. Barger on the provision that I asked  
17 about, and then I'd like to hear what you have to say on  
18 that provision, too, Mr. Porter.

19 MR. PORTER: Certainly.

20 THE COURT: What you know about provision J.

21 MR. PORTER: I'm prepared to speak to that, Your  
22 Honor.

23 THE COURT: You both can speak to J, and Mr. Troy  
24 and whoever you want to have speak, as long as we don't have  
25 a bankruptcy dissertation as we did at one of our hearings



1 that went on for a long time. My manners didn't allow me to  
2 stop the speaker. I'm asking what time it is, not how to  
3 make the clock.

4 Okay. The Court stands in recess for 15 minutes.

5 (Recess from 3:13 p.m. to 3:27 p.m.)

6 THE COURT: I think we were going to address the  
7 bankruptcy matters first.

8 MR. McFARLAND: We were, Your Honor. In light of  
9 the Court's questions, which I answered as best I could, but  
10 admittedly a little out of my normal bailiwick, we have Nat  
11 Brooks here, Your Honor, who represents the company, the  
12 debtors in the bankruptcy. I thought he may be able to  
13 answer the Court's questions and give just a slight overview  
14 on some things.

15 THE COURT: Mr. Brooks is with Troutman Sanders?

16 MR. McFARLAND: He is. I will say this to the  
17 Court. He has not been admitted *pro hac vice*.

18 THE COURT: I'll listen.

19 MR. McFARLAND: Thank you, Your Honor.

20 MR. BROOKS: Thank you, Your Honor, for letting me  
21 speak.

22 THE COURT: Good afternoon, Mr. Brooks.

23 MR. BROOKS: Hesitant being introduced as the  
24 bankruptcy expert, but I can just give the Court -- to  
25 answer the question about the proposed transaction before

1 this Court, in the alternative, if that transaction is  
2 consummated, the debtors, if the deal with PAHL, Your Honor,  
3 is not consummated, would be forced to return to the  
4 bankruptcy court and liquidate. There is no time or  
5 creditor support for any other deal in the case. This is  
6 the deal that the creditors have signed off on. If that  
7 deal doesn't close, the only option for the debtors would be  
8 to convert the case and liquidate.

9 THE COURT: Mr. Brooks, let me just ask you, what  
10 is the status? I just call it the museum plan because we  
11 decided early on it would be easy to just refer to it  
12 collectively as the museum plan. But what is the status of  
13 that, if any, in the bankruptcy court?

14 MR. BROOKS: The creditors' committee in the case,  
15 Your Honor, proposed that plan jointly with the museum, and  
16 the creditors' committee was the party in interest to  
17 propose that plan under the bankruptcy code. The committee  
18 withdrew support of that plan. So there is no party with  
19 standing currently before the bankruptcy court to push that  
20 plan forward, and that's the status.

21 THE COURT: Let me see if there is anything else.  
22 Is there any other plan? You're saying there is no other.  
23 The only two I have ever been aware of, have been brought to  
24 this Court's attention, were the two plans, were PAHL and  
25 the museum.

1 MR. BROOKS: That's correct, Your Honor. The  
2 equity committee's plan, their disclosure statement was  
3 denied, so that will not be going forward.

4 THE COURT: Then, thank you.

5 MR. BROOKS: Thank you, Your Honor.

6 THE COURT: Mr. Troy, do you want to make any  
7 statement?

8 MR. TROY: Thank you, Your Honor. Matthew Troy,  
9 United States Department of Justice, Civil Division, on  
10 behalf of NOAA. No, I think Mr. Brooks covered what I was  
11 going to tell you. And hearing it from the debtor is  
12 probably hearing it better than from me.

13 THE COURT: I just wanted to make sure because we  
14 hear bankruptcy appeals, but the day-to-day operations of  
15 bankruptcy, I just want to be sure that I understood what  
16 was going on and that I had the right understanding of the  
17 bankruptcy proceedings.

18 MR. TROY: I think you do. If you have any doubts,  
19 I'm here for questions.

20 THE COURT: Thank you, Mr. Troy.

21 I don't have any further questions about the  
22 bankruptcy at this juncture.

23 Mr. Barger, if you can answer the questions that I  
24 asked about J.

25 MR. BARGER: I can, Your Honor. Before I start, I

1 just want to say, if, with the Court's permission, may I use  
2 the time, don't tell me how to make the clock analogy in the  
3 future, because if I have heard it, I forgot it. I really  
4 want to use that again, not in front of you, but can I take  
5 that with me?

6 THE COURT: You can certainly use it. I don't own  
7 that expression, I don't think.

8 MR. BARGER: It's a great teaching tool for my  
9 colleagues. Give me the time, not how to make the clock.  
10 Tell me about the case, not the whole case. I apologize for  
11 trying to be a little funny. J is largely the product of  
12 discussion with the government and their desire to make sure  
13 that NOAA, and ultimately the Court, are given more fulsome  
14 information. It wasn't an effort to reduce information.

15 So it really was the product of, at least as I  
16 understand it at the time, if we were able to go to closing,  
17 if the Court approves the agreement, the LLC agreement as it  
18 exists, is relatively vanilla. It has three members, two of  
19 whom that are here, and the third one who is a part of it  
20 had committed to remaining in the LLC.

21 But it is anticipated that the number of board  
22 members would expand and that, perhaps, some aspects of the  
23 agreement would be amended. None of that would have any  
24 impact whatsoever on PAHL's commitment and being bound to  
25 this order and the Court's jurisdiction.

1           So at least as I understood it, the desire of the  
2 government was to make sure they are getting more fulsome  
3 information as the business through PAHL gets off the ground  
4 and changes with the idea of being there is going to be an  
5 infusion of money, the expansion of the business, and my  
6 clients could speak better to this if the Court needs, but  
7 that was the desire in J.

8           If the Court looks at the last sentence of J, that  
9 is sort of the catchall, that not only do we have to give  
10 the information within 60 days at closing, but PAHL shall  
11 provide updates to the Court if there are any material  
12 changes. So those two in combination give the Court and  
13 NOAA immediate information and then periodic information if  
14 that changes. But the core members remain the same.

15           THE COURT: Thank you.

16           MR. BARGER: Yes, ma'am.

17           THE COURT: I think that was the only question I  
18 had. I'm going to make a final review before we adjourn of  
19 all of my notes, but I think that was the only outstanding  
20 question at the moment.

21           MR. BARGER: Thank you, Judge.

22           THE COURT: Thank you.

23           Mr. Porter, I think you can address that provision,  
24 J.

25           MR. PORTER: Yes, ma'am. Mr. Barger has said it

1 correctly, the evolution from D and adding J does have its  
2 origins in the corporate separateness and the maintaining  
3 the separateness of the corporate structure of R.M.S.T. As  
4 this process began, NOAA wanted a great deal of information  
5 to be included and a great deal of commitments.

6 The whole issue of the potential for piercing the  
7 corporate veil has aspects that come back to haunt the  
8 government potentially, as well, if something were to happen  
9 to PAHL and someone looks at an agreement and it's so  
10 intertwined that someone goes after PAHL and R.M.S.T. to the  
11 artifacts.

12 So we understand that argument. That's why D  
13 changed slightly to remove PAHL and why J then comes into  
14 the picture, to ensure that the Court is getting the  
15 information it needs to know what PAHL's structure is and  
16 who is involved.

17 As Mr. Barger says, initially the agreement that is  
18 in the due diligence materials refers to a managing member,  
19 but we asked the question, and there is not a managing  
20 member. They were acting in unison, all three of them. All  
21 three act together on behalf of PAHL to make decisions.

22 So we asked if that's changing, then that's the  
23 information we want. But that's where J comes from, and  
24 even the addition, it was actually a late addition at the  
25 very end of that, that there would be updates continually to

1 that so that the Court would always have information about  
2 PAHL and R.M.S.T.

3 THE COURT: Thank you. Let me look through my  
4 hearing file. The one outstanding matter I understand is  
5 that you're going to get the Court ASAP the resolutions from  
6 the three, basically, entities in the membership of PAHL?

7 MR. BARGER: Yes, Your Honor. Apollo, Alta and  
8 PacBridge to confirm that they authorized.

9 THE COURT: Those three individuals to sign?

10 MR. BARGER: Yes, Your Honor.

11 THE COURT: I think it's Mr. Li, Mr. Glatt and  
12 Mr. Trainor.

13 Mr. Porter, I'm going to pass over to you the  
14 original of the order that you want the Court to order. I'm  
15 not entering it at the moment, not to say I won't, but  
16 that's not why I'm passing it to you. I'm passing it so  
17 that you put on here where it says "seen," you put in your  
18 own handwriting "and agreed" with your initials beside it.

19 MR. PORTER: I will do that, Your Honor.

20 THE COURT: This is the original signature page  
21 that was given to the Court, submitted on the 16th. If you  
22 will pass this to Mr. Porter to put "and agreed" with his  
23 initials.

24 MR. PORTER: Your Honor, just to be clear, we, of  
25 course, fully agree with this order. We were directly

1 involved in it. We are not a party. We are still the  
2 *amicus* but we fully agree with the terms of this order.

3 THE COURT: That is all that I'm asking. You  
4 didn't say we asked for this. They said we ask for this.  
5 You put seen and agreed. I think the full record of the  
6 case will be clear of NOAA's involvement and why you're here  
7 and why you were a party to the order, and you did the due  
8 diligence.

9 While I am here, I was going to do this in the end,  
10 but I wanted to thank you and Ms. Roller and all of the  
11 individuals that you've been involved with for your due  
12 diligence and what you've done to assist the Court and all  
13 of the parties in getting this proposed order to approve the  
14 Asset Purchase Agreement. I know you all have worked very  
15 hard. The Court is very appreciative.

16 MR. PORTER: Thank you, Your Honor.

17 THE COURT: There is one change that I'm definitely  
18 going to make to the order, so I will tell you now, and if  
19 there is a problem, you will know about it. It's on Page 4  
20 of the order. It's provision G: "R.M.S.T. and PAHL shall  
21 provide the Court and NOAA at least..." I'm changing that  
22 to 90 days because with the complexities of certain matters,  
23 60 days can go by pretty quickly, as we all know. So I'm  
24 going to change that deadline there to 90 days. Is there  
25 any opposition to it?



1 MR. PORTER: Not from the United States, Your  
2 Honor.

3 MR. McFARLAND: Not from R.M.S.T., Your Honor.

4 THE COURT: Mr. Barger?

5 MR. BARGER: No opposition, Your Honor. Thank you.

6 THE COURT: I have made that change, and I have put  
7 my initials by it.

8 Then is there anything further that anyone wants to  
9 offer in regard to the first motion that we were on, which  
10 is to approve the Asset Purchase Agreement? Hearing  
11 nothing, we will move on to the amended motion to intervene.

12 Mr. Powers, I said I would give you an opportunity,  
13 and you've heard some matters represented today, and you can  
14 certainly address the Court now. Again, I will hear  
15 everything you have to say within reason.

16 MR. POWERS: Thank you, Your Honor. May it please  
17 the Court. Your Honor, I think it is important to recall  
18 how we came to be here, how it is that R.M.S.T. came to  
19 acquire title to the French collection.

20 Your Honor, to be clear, the museum, the concern  
21 that we have had all along, and I know it's a concern the  
22 Court shares, is that there is a very significant, I would  
23 say, clear and present risk that as soon as this order is  
24 approved, the French collection will be sold off into  
25 oblivion.

1 THE COURT: Before you go any further with that,  
2 though, hasn't the Fourth Circuit said that this Court lacks  
3 jurisdiction over the French collection and artifacts?

4 MR. POWERS: Your Honor, specifically the Court  
5 said this Court lacks *in rem* jurisdiction over the French  
6 artifacts. But the Fourth Circuit also said some other  
7 things in its opinion that I think is worth noting. As Your  
8 Honor well knows, in the 2000 -- I believe it was the 2006  
9 opinion from the Fourth Circuit, 435 F.3d 521, the Fourth  
10 Circuit emphasized how it came to be that R.M.S.T., or the  
11 predecessor in interest to R.M.S.T., which I believe was  
12 Titanic Ventures, came to acquire title of the French  
13 collection.

14 On Page 527 of the Fourth Circuit's decision, they  
15 emphasize that, "Titanic Ventures also made a commitment" --  
16 that's the Fourth Circuit's word is "commitment," that's not  
17 my word. And what they refer to is the letter of September  
18 22nd, 1993, 25 years ago, Your Honor, in which Titanic  
19 Ventures petitioned the French government for title to the  
20 French artifacts.

21 And in that letter, Your Honor, which the Fourth  
22 Circuit recites in its decision, I quote, "Titanic Ventures  
23 also made a commitment in the letter that 'the artifacts  
24 will only be used [for] a cultural purpose and will not,  
25 therefore, be part of any operations which would lead to

1 their dispersion, but to the exception of exhibition  
2 purposes, and none of the artifacts will be sold.'" "

3 The Fourth Circuit went on, on Page 528, and I  
4 think it's critical because the Fourth Circuit recognized  
5 that implicit in the French government's grant of title was  
6 a recognition that, and they, indeed, incorporated that  
7 letter into their decision, that the French artifacts would  
8 not be sold.

9 I'm continuing, Your Honor, by quoting the Fourth  
10 Circuit: "The administrator's decision" -- the French  
11 administrator's decision -- "also incorporated Titanic  
12 Ventures' assurances made in its September 22nd, 1993 letter  
13 stating that, '[Titanic Ventures] agreed to make use of such  
14 objects in conformity with the respect due the memory of  
15 their initial owners and to not carry out any commercial  
16 transaction concerning such objects nor any sale of any one  
17 of them nor any transaction entailing their dispersion, if  
18 not for the purposes of an exhibition.'" "

19 THE COURT: Excuse me just one minute. Go ahead,  
20 Mr. Powers.

21 MR. POWERS: I believe it's clear from the Fourth  
22 Circuit's language they would not have recited that  
23 commitment, that guarantee by -- and I'll use the term  
24 R.M.S.T. because they were essentially the successor in  
25 interest to Titanic Ventures. The Fourth Circuit made a

1 point of explaining this commitment to keep the collection  
2 together in its 2006 decision, which I've been citing to,  
3 holding that this Court lacked jurisdiction over the *in rem*  
4 collection, but that's all they said.

5           They did not in any way limit this Court's ability  
6 to -- let's skip forward just one year. Right after this  
7 decision in 2006, as Your Honor well knows, there are  
8 covenants and conditions in which R.M.S.T. again came  
9 forward and represented to this Court, in exchange for  
10 asking this Court, as a condition precedent for receiving an  
11 *in species* salvage award, and again they reiterate, "The  
12 subject Titanic artifact collection shall, to the maximum  
13 extent possible and consistent with reasonable collections,  
14 management, practices, be conserved and curated together  
15 with the French Titanic artifact collection as an integral  
16 whole by the trustee."

17           THE COURT: Let me stop you there because I think  
18 these are important points, and I will certainly hear a  
19 response as appropriate from Mr. McFarland, Mr. Barger, and  
20 Mr. Porter. It seems to me that this Asset Purchase  
21 Agreement would cover if they try to sell the French  
22 artifacts because it would be part of the Titanic  
23 Collection, and they have to notify the Court within 60 days  
24 or 90 days.

25           So it would seem to me that, at minimum, if the

1 Court does have jurisdiction or decides that the Fourth  
2 Circuit has, and, of course, that would all have to be  
3 briefed. But it would seem to me now the Asset Purchase  
4 Agreement would require, in a number of provisions,  
5 notification to this Court if they were going to try to  
6 separate or sell the artifacts, for two reasons: First,  
7 it's in the Asset Purchase Agreement; and, second, it's in  
8 the covenants and conditions that they have to make every  
9 effort to keep the artifacts together.

10 If they are going to do anything that involves the  
11 covenants and conditions or the Asset Purchase Agreement,  
12 they have to notify the Court.

13 MR. POWERS: I don't read it that way,  
14 respectfully, Your Honor. To be clear, they have  
15 continuously referenced the covenants and conditions as  
16 precatory language only. It is just aspirational as it  
17 regards the French collection. I want to emphasize that the  
18 only way that the public's interest is going to be protected  
19 is either the purchaser agrees, as the museum has done, to  
20 commit that they will never break up the collection, or not  
21 nearly as good, but I guess a second best option would be  
22 that they will never break up the collection without this  
23 Court's prior approval.

24 The order doesn't do either. The order simply says  
25 if they want to sell the French collection, they can do it.

1 Frankly, there is nothing stopping them.

2 THE COURT: Let's go to that in the order because I  
3 think that's important. Let's look at the actual wording of  
4 the order. I have it in front of me.

5 MR. POWERS: I don't have it in front of me, Your  
6 Honor, if I could maybe get a copy.

7 THE COURT: You can. If not, I'm sure we can get a  
8 copy.

9 MR. POWERS: Thank you, Your Honor. I would refer  
10 to Paragraph G, Page 5, in which when we were here last  
11 time, and Your Honor had concerns, the original language  
12 said that they had to provide 60 days' notice and seek Court  
13 approval. Well, seeking Court approval has been stricken  
14 out.

15 THE COURT: I noted that when I was going through  
16 this, but it is in here the Court approval. Wait just a  
17 minute. I have to go back to my marked up copy. It says  
18 here, "And shall be subject to."

19 MR. POWERS: I'm sorry. Where are we looking, Your  
20 Honor?

21 THE COURT: I'm looking at G. It says, "Any such  
22 action as described in G(i) and (ii) shall be subject to  
23 prior approval of this Court..."

24 MR. POWERS: "...to the extent required by  
25 applicable law, including orders by this Court (including

1 the C&Cs) and the United States Court of Appeals for the  
2 Fourth Circuit." I believe what this is saying, Your Honor,  
3 and this is speculation on my part, but I believe what that  
4 language is intended to say is, we didn't -- the Fourth  
5 Circuit, in their interpretation, R.M.S.T. and PAHL's  
6 interpretation, is the Fourth Circuit has said, you, Your  
7 Honor, have no *in rem* jurisdiction over the French  
8 collection, which, by extension, means you have no right to  
9 tell us what we can and cannot do *vis-à-vis* the French  
10 collection.

11 I believe that is absolutely incorrect. They were  
12 the ones who -- let's put it this way. The only way they  
13 were able to gain title to the French collection was to  
14 represent to the French government that they would never,  
15 ever sell it. Then they agreed again with this Court to the  
16 extent possible. But this wordsmithing, to me, is  
17 indication that they are going to sell the French  
18 collection, and what they are going to say is, Your Honor,  
19 we didn't have to seek approval to sell the French  
20 collection because the Fourth Circuit, or at least their  
21 interpretation of the Fourth Circuit, is that we didn't have  
22 to because you don't have *in rem* jurisdiction.

23 If your only hammer to enforce it is *in personam*  
24 jurisdiction over an empty box, which is the stalking horse.

25 THE COURT: But let me ask you this. The first

1 part of this says they've still got to give "90 days advance  
2 notice of any action that will result in the Titanic  
3 Collection (as defined in the C&Cs)..." and isn't it defined  
4 in the C&Cs involving the French artifacts?

5 MR. POWERS: To the extent -- I think what you are  
6 going to hear, the argument will be conserved and curated  
7 together with French Titanic Artifact Collection to the  
8 extent possible.

9 THE COURT: The Titanic Collection is different.  
10 That's keeping it together to the extent possible. It's  
11 defined in the Titanic Collection, and I'll go back and look  
12 at it, but the Titanic Collection is defined. I'm not  
13 talking about what they have agreed to do with it in the  
14 C&Cs, but the Titanic Collection is defined in the C&Cs as  
15 including the French artifacts.

16 Ms. Roller, you are shaking your head yes. Have  
17 you read it recently, or Mr. Porter?

18 MR. PORTER: Yes, Your Honor. That Section II  
19 Paragraph H of the C&C: "Titanic Collection refers to the  
20 total assemblage of the French Titanic Artifact Collection  
21 and the subject Titanic Artifact Collection."

22 MR. POWERS: Your Honor, if that's the  
23 interpretation, then I guess our concerns are somewhat  
24 alleviated. But, again, the other issue is if they're going  
25 to put NOAA and the Court on notice that this is what's



1 going to -- let's assume that the Court approves the sale,  
2 it goes through, it has been consummated, it's closed, and  
3 now they decide they want to sell the French collection  
4 because they think they can, and apparently they are going  
5 to give 90 days' notice to the Court and to NOAA, but then  
6 what if nobody challenges it?

7 THE COURT: Well, as soon as they give 90 days'  
8 notice, I can assure you what this Court will do. This  
9 Court is going to issue them an order that they can take no  
10 further action whatsoever until they come before this Court  
11 and we brief this provision. It's not up to them to  
12 interpret what the United States Court of Appeals for the  
13 Fourth Circuit said. It's up to me at a threshold level as  
14 the judge of this Court, and then it's up to the Fourth  
15 Circuit judges, if for some reason someone doesn't agree  
16 with my interpretation of it.

17 As far as I'm concerned, I don't like the language  
18 "to the extent required by applicable law." That may come  
19 out of here. I don't know why that's there. Before they  
20 sell anything, it's going to be subject to the approval of  
21 this Court, including its orders and the United States Court  
22 of Appeals for the Fourth Circuit.

23 The reason I would leave the United States Court of  
24 Appeals for the Fourth Circuit there is not necessarily  
25 because I agree with their interpretation of that case, but

1 it gives them the legal option that they would have to  
2 appeal what this Court could decide if this Court decided  
3 not to let them do something that they thought they legally  
4 could.

5 MR. POWERS: That's all we can ask, Your Honor. We  
6 share the Court's concerns about keeping the collection  
7 together. That's the only reason we are here to begin with,  
8 and to be clear, our plan is still in abeyance in the  
9 bankruptcy court. It has not been rejected by the judge.  
10 It's still sitting on his desk. Yes, the creditors'  
11 committee withdrew approval for several reasons, largely  
12 because the landlord switched sides and likes this deal  
13 better, for various reasons. It gets more money.

14 But let's be clear. We couldn't participate  
15 originally because of this 1 million non-refundable deposit  
16 which kept us from actually formally submitting the plan. I  
17 certainly don't profess to be a bankruptcy expert, and the  
18 bankruptcy lawyers are here if the Court would like any  
19 further questions to ask of them.

20 THE COURT: I agree with what you say. I think  
21 it's been held in abeyance. That's the way I read  
22 everything. Whether I'm using a technical bankruptcy term,  
23 and I think this is a Section 323 sale, and that's the way  
24 I'm proceeding.

25 MR. POWERS: To be clear, if for whatever reason

1 the sale were not to go through, I think the doomsday  
2 predictions of liquidation are somewhat overblown because at  
3 the end of the day, it's ultimately up to them. If they  
4 want to liquidate, they can liquidate. But If they really  
5 want to sell, we are here and ready to go if for whatever  
6 reason the deal falls through. I thank Your Honor for  
7 allowing me to speak.

8 THE COURT: All right. Mr. McFarland.

9 MR. McFARLAND: Thank you, Your Honor. Your Honor,  
10 we are, ostensibly, here on a motion to intervene that was  
11 filed by the museum months ago.

12 THE COURT: They asked for the Court to hold it in  
13 abeyance. I have given them a say here out of an abundance  
14 of caution and so that everything is fully on the record.

15 MR. McFARLAND: I understand, Your Honor.

16 THE COURT: I'm not calling technicalities on them.  
17 They have not intervened yet because they have a motion in  
18 abeyance, which I am granting.

19 MR. McFARLAND: They have asked this Court to hold  
20 their motion in abeyance, is what I understand.

21 THE COURT: What if this doesn't go through?  
22 Because even if I enter this, it's still got to be approved  
23 by PAHL.

24 MR. McFARLAND: But what the museum is asking this  
25 Court to do is to let them sit on the sidelines when they

1 have no legal standing. They didn't participate -- they  
2 participated to a certain extent in the bankruptcy court,  
3 then the plan that was offered by the creditors' committee,  
4 of which they were a part, and the only reason they got to  
5 put that before the bankruptcy court is because they joined  
6 with the creditors' committee. They are not a creditor of  
7 my client. This Court well knows they don't have any legal  
8 ownership in the artifacts.

9 THE COURT: All I'm doing is approving, if I do, an  
10 Asset Purchase Agreement, and this has not yet been  
11 approved. There is a provision here that then it has to go  
12 back to PAHL and get approval. Maybe the whole transaction  
13 falls through. It's not over till it's over.

14 MR. McFARLAND: I agree, Your Honor. But here is  
15 what doesn't happen if it falls through. It doesn't mean  
16 that automatically the museums', to the extent it's, quote,  
17 in abeyance, offer gets accepted by the bankruptcy court.  
18 We have to go through a whole another process.

19 THE COURT: What difference does it make if this  
20 Court holds the museum, that the Court hasn't let them  
21 intervene? All it is, is saying I'm not ruling on your  
22 motion to intervene. I'm holding it in abeyance. It  
23 doesn't have anything to do with the bankruptcy court at  
24 this juncture if this goes through.

25 MR. McFARLAND: Well, Your Honor, I think there is

1 an issue.

2 THE COURT: I think you should check with your  
3 bankruptcy lawyer.

4 MR. McFARLAND: I will, Your Honor. I think what  
5 the bankruptcy folks will tell this Court, and we did in  
6 your pleading is, what the museum is doing is in violation  
7 of the automatic stay and the bankruptcy court's order.

8 THE COURT: Then take that up with the bankruptcy  
9 court. If you want to go down to the bankruptcy court and  
10 extend your legal fees even more and extend this even more,  
11 why don't you go before the bankruptcy court and file a  
12 motion for sanctions because they violated the stay.

13 MR. McFARLAND: We don't want to do that, Your  
14 Honor, unless we absolutely have to.

15 THE COURT: You just said by filing the motion to  
16 intervene here, they violated the stay. That's not for me  
17 to rule on. That's a bankruptcy court issue. If they  
18 violated the stay and the bankruptcy court thinks they have,  
19 then that's up to the bankruptcy court.

20 MR. McFARLAND: Right. But what we don't want is,  
21 we do want this transaction to close as soon as possible.

22 THE COURT: We are talking about holding it in  
23 abeyance. I think Mr. Wainger might have written you a  
24 note.

25 MR. McFARLAND: He did, Your Honor. That's fine.

1 What we don't want is something to interrupt the closing.

2 THE COURT: Maybe you are doing it right now. The  
3 bottom line is that by granting the museum's motion to hold  
4 in abeyance intervention is exactly what it says. The Court  
5 has not let them intervene here. It said this is an ongoing  
6 case. I'm holding your motion in abeyance. I'm holding  
7 your intervention in abeyance. I'm granting that. In the  
8 meantime, if your position is they are violating the  
9 bankruptcy stay, take it up with the bankruptcy court.

10 MR. MCFARLAND: Understood, Your Honor. That's  
11 fine. We can live with that. Our intention is, Your  
12 Honor -- I want to emphasize, our intention is, assuming  
13 this Court will enter the order approving the sale of the  
14 stock purchase, we want to then proceed to a closing and  
15 then final approvals.

16 We appreciate the Court's assistance and the  
17 Court's moving things along so that that can be done and  
18 your attention.

19 THE COURT: Okay. Mr. Porter, if you want to  
20 address this position about final approval and the French  
21 artifacts.

22 MR. PORTER: I will if Your Honor would like me to.  
23 Certainly, as Your Honor knows, except for Mr. Barger, I  
24 have been involved in this case the least amount of time a  
25 couple of years, maybe close to three now. The issue of the

1 French artifacts and the jurisdiction and whether the Court  
2 can approve has been a back and forth between NOAA and  
3 R.M.S.T. on a number of occasions, and it has come before  
4 this Court at least on one occasion, perhaps more.

5 The issue, though, has always been at that time is  
6 there wasn't particularly a live case or controversy to  
7 actually address that particular issue, and so it's always  
8 been suggested, at least I believe we have suggested, that  
9 we sort of kick this can down the road till a time that we  
10 actually have a live case or controversy for the Court to  
11 decide.

12 This provision in here about the 60, now 90 days,  
13 is really intended to do just that. There is, obviously, a  
14 disagreement, and as we have relayed in our filing as well,  
15 we personally think that the covenants and conditions  
16 contain any number of provisions -- I think we have listed  
17 out six or eight of them -- that directly impose on R.M.S.T.  
18 responsibilities *vis-à-vis* the French artifacts, directly  
19 impose on them, and the C&Cs obviously impose *in personam*  
20 jurisdiction on R.M.S.T. to comply with all provisions.

21 So the implication of that, should there be some  
22 action to sell the French artifacts, is a question for when  
23 that comes up, and we will be prepared to address what the  
24 Court's role is, what we believe the Court can do and what  
25 consequences may befall a request to dispose of any of the

1 French artifacts.

2 THE COURT: All right.

3 MR. PORTER: Thank you.

4 THE COURT: Then is there anything that anyone else  
5 wants to add in regard to the matters before the Court?

6 MR. PORTER: Not from the United States, Your  
7 Honor.

8 MR. McFARLAND: Not from R.M.S.T., Your Honor. We  
9 appreciate the Court's attention and assistance.

10 MR. BARGER: Nothing from PAHL.

11 THE COURT: Then when do you plan to have these  
12 resolutions to me, Mr. Barger?

13 MR. BARGER: This week.

14 THE COURT: Well, you want this Asset Purchase  
15 Agreement, it is called a condition precedent to me putting  
16 my signature on it.

17 MR. BARGER: Yes, Your Honor.

18 THE COURT: I'm still going to go back and read  
19 this, and I will make any changes I deem appropriate based  
20 upon all your filings, the hearing today, and everything  
21 that's been said to determine its entry. But that's a  
22 threshold requirement, in my mind, because I know those  
23 resolutions are required under the law.

24 MR. BARGER: Yes, Your Honor. Could I go back  
25 just, like, 10 seconds? I did want to add one other thing.



1 THE COURT: Sure. You can come up to the podium.

2 MR. BARGER: I know my partners will question my  
3 sanity on this. I think I'm right. I just wanted to  
4 reiterate where we started today -- when I started -- that  
5 our clients are committed to making this exhibition business  
6 work and putting in time, effort, money, to make the  
7 business work, and they think it is a viable business, one  
8 that satisfies the public's interest in not only the Titanic  
9 artifacts but the other artifacts, and they see this as an  
10 opportunity not only to have a viable business but to serve  
11 the public's interest in having access to these artifacts,  
12 not only in fixed locations but around the world.

13 So I just wanted to emphasize that. As counsel for  
14 my clients, I say that as an officer of the Court that they  
15 are committed to making this business work and not only --  
16 they think it's viable now given some of the bad business  
17 decisions and the cost of bankruptcy previously, but they  
18 believe with a good business plan, they can make this an  
19 even bigger success. I know they are committed actually to  
20 going to Atlanta after this hearing to meet with Alex  
21 Klingelhofer. They have had conversations. They know about  
22 certain needs that the business has immediately that they  
23 plan to address, such as an HVAC system to make sure the  
24 artifacts are properly cared for, to hire additional  
25 personnel. So I proffer that to the Court so that the Court

1 has some assurances, to the extent my reputation matters,  
2 that my clients are committed to making this a successful  
3 venture with all those artifacts. Thank you for the Court's  
4 time.

5 THE COURT: I think under this the business plan  
6 has to be submitted, does it not, Mr. Porter, under the  
7 Asset Purchase Agreement?

8 MR. PORTER: Yes, Your Honor. We did request that  
9 that was part of Mr. Li's declaration that he indicated that  
10 that would be done. We would anticipate that would probably  
11 be done as part of a periodic report.

12 THE COURT: If it's not done, you will clearly  
13 notify the Court?

14 MR. PORTER: Absolutely, Your Honor. There were  
15 four items in Mr. Li's declaration that were of concern --  
16 well, concern of interest to NOAA be done, and, certainly,  
17 we will be monitoring that.

18 THE COURT: You said that Mr. Li is here today?

19 MR. BARGER: Yes, Your Honor. Both Mr. Li and  
20 Mr. Wong are here. Mr. Li, of course, was the one that  
21 signed the two declarations, and we have reaffirmed the  
22 accuracy of those.

23 THE COURT: Well, why don't we put him under oath  
24 and have him re-affirm them here today. Since he is here,  
25 he can come up to the podium.

1 MR. BARGER: May I stand next to him?

2 THE COURT: Yes, you may.

3 (Witness was sworn.)

4 GILBERT LI, having been first duly sworn, was  
5 examined and testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q. Sir, for the record, could you just please state your  
9 name?

10 A. Gilbert Li.

11 Q. And could you spell it for the court reporter.

12 A. Sure. First name is G-i-l-b-e-r-t. Last name is L-i.

13 Q. Mr. Li, you presented a declaration before this Court.  
14 Do you recall that?

15 A. Yes, I do.

16 Q. Let me go to that. I had it in front of me at the  
17 beginning of the hearing.

18 MR. BARGER: It is 527-2, I believe.

19 THE COURT: I do. I have it right here, 527-2.

20 BY THE COURT:

21 Q. Mr. Li, I'm going to have this document, which is 527-2,  
22 it was Exhibit B to a filing, presented to you to look at.

23 MR. BARGER: Your Honor, we have a copy in front of  
24 us.

25 THE COURT: I want you to see this one because I'm

1 going to make it a court exhibit.

2 MR. BARGER: All right.

3 BY THE COURT:

4 Q. If you would look at that and verify for the Court that  
5 that is the declaration that you signed?

6 A. Yes, Your Honor, this is the one.

7 Q. Did you have the authority that you've represented to  
8 sign that declaration?

9 A. Yes, I do.

10 Q. Do you reaffirm under oath that everything you've said in  
11 there is true and correct, to the best of your knowledge,  
12 information, and belief?

13 A. Yes, I do.

14 THE COURT: You can pass it back up to the Court,  
15 and we will have this marked as PAHL Exhibit Number 2. I  
16 believe we have a number 1. We will make that number 2.

17 (The document was received in evidence as PAHL  
18 Exhibit No. 2.)

19 THE COURT: Is there anything else anybody wants me  
20 to ask of Mr. Li?

21 MR. PORTER: No, Your Honor.

22 MR. McFARLAND: No, Your Honor. Thank you.

23 THE COURT: Thank you, Mr. Li.

24 THE WITNESS: Thank you, Your Honor.

25 (Witness excused.)

1 THE COURT: Mr. Barger, is there anything further  
2 you want the other individual, I believe that you have here  
3 is -- who were the two? You had Mr. Li.

4 MR. BARGER: And Mr. Wong.

5 THE COURT: Mr. Giovanni Wong?

6 MR. BARGER: Correct.

7 THE COURT: Any representations you want Mr. Wong  
8 to make to the Court?

9 MR. BARGER: Well, I covered them in my proffer,  
10 but in specific, if the Court needs to hear his testimony  
11 under oath, he could essentially talk about the business  
12 plan and their belief that there is an opportunity to grow  
13 the exhibitions and make sure that even more people have  
14 access to the Titanic exhibits and the other exhibits in  
15 R.M.S.T. That would be the extent really.

16 THE COURT: I think we have covered that. It's  
17 going to be presented, and we will have all of that  
18 presented to the Court. I would take your representation as  
19 an officer of the Court that that will be done.

20 MR. BARGER: Thank you, Your Honor. Nothing  
21 further from me.

22 THE COURT: Thank you. Counsel, if there is  
23 nothing further, the Court stands in recess until tomorrow  
24 morning at 9:00 a.m.

25 (Hearing adjourned at 4:15 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

X \_\_\_\_\_ /s/ \_\_\_\_\_ x

Jody A. Stewart

X \_\_\_\_\_ 12-18-2018 \_\_\_\_\_ x

Date

JODY A. STEWART, Official Court Reporter